Arnold Schwarzenegger, Governor

The California Managed Risk Medical Insurance Board
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April 28, 2008

Assembly Member Mervyn Dymally, Chairman
Assembly Health Committee
The State Capitol, Room 6005
Sacramento, CA 95814

re: AJR 54 (Laird) – SUPPORT

Dear Chairman Dymally,

The Managed Risk Medical Insurance Board is pleased to **support** AJR 54 (Laird) which will help protect the health and well-being of tens of thousands of children in California and across the United States enrolled in the State Children's Health Insurance Program (SCHIP).

The SCHIP statute, passed by Congress in 1997, provided federal funding for eligible uninsured children of working families who make too much money to qualify for Medicaid and provided states with flexibility to design their programs to meet state-specific needs. For example, the cost of living is higher in California than in many other states, thus necessitating a higher SCHIP income eligibility level as compared with many other states' programs.

On August 17, 2007, the federal Centers for Medicare and Medicaid Services (CMS) sent a letter to all states asserting eight new conditions which would have to be satisfied in order to enroll children with family incomes above an "effective income" of 250 percent of Federal Poverty Level. CMS has interpreted "effective income" to mean gross income, taking away state flexibility which currently allows states to apply income deductions when calculating "net" income for eligibility. CMS further asserts that states must comply with all of the new requirements by August 18, 2008.

CMS approved California's eligibility income level (net income with deductions) of 250 percent FPL in a State Plan Amendment on November 23, 1999. In all likelihood, the

State would be unable to comply with all of the CMS requirements and federal funding for nearly 35,000 children in California would be lost.

The policies that CMS is attempting to apply include some that are simply bad public policy and contrary to the policy direction embraced by California's current and past Governors and Legislatures. They are also incongruent with existing state law. For example, they require that children whose family income exceeds 250 percent gross be uninsured for a year before being eligible. They also require that cost-sharing be at the maximum allowed under federal law (5 percent of family annual income). Both of these would lead to an increase in the number of uninsured children.

There are serious questions on whether California could comply with <u>all</u> of the new rules, as asserted by the CMS. The California HealthCare Foundation's October 5, 2007 report "Assessing California's Ability to Comply with New Federal SCHIP Rules," available at www.mrmib.ca.gov/MRMIB/HFP/AssessingCompliancewith SCHIP-Final-10-05-07.pdf identified two requirements that are virtually impossible for California to meet: 1) assure that the number of children in the target population (under 200 percent of poverty) insured through private employers has not decreased by more than two percentage points over the prior five year period and; 2) assure that the state has enrolled at least 95 percent of the uninsured children in the state below 200 percent of poverty who are eligible for SCHIP or Medicaid. The CHCF report also identifies other requirements that would significantly increase program administrative costs and complexity while increasing the barriers to enroll uninsured eligible children.

Governor Schwarzenegger wrote to President Bush on August 29, 2007 and to U.S. Health and Human Services Secretary Leavitt on September 17, 2007 asking that they withdraw the letter. He also announced California's intent to file an amicus brief in the New York state's litigation. On April 18, 2008 the California Attorney General, on behalf of the Governor, joined the states of New Mexico, Massachusetts and Connecticut in filing an amicus brief in a lawsuit filled by the states of New York, Illinois, Maryland and Washington to prevent the CMS rules from being implemented.

The MRMIB would incur significant increased costs if it implemented the directive. These would include costs for staff time and travel to work with the CMS. Additional costs would include changing operations and amending statutes and regulations to re-structure California's SCHIP. Also, costs would be incurred to alter contracts with and operations of the administrative vendor that provides services for the program. These potential costs can not be estimated more precisely until the exact CMS requirements are clearly understood and CMS has provided direction on how states must demonstrate their compliance with the requirements.

<u>Impact of the Letter to Date</u>

Four states that enacted legislation expanding their SCHIP programs have been forced to halt or cut back their coverage expansion plans, according to Georgetown University Center for Children and Families. Two other states have chosen to finance their expansion with state only funds and an additional eighteen states will be affected over the next five months, including fourteen that cover children above the new federal income cap.

A February 2008 Families USA report estimates that the directive has prevented more than 150,000 children nationally from getting health care in states that have tried to expand SCHIP coverage and also jeopardizes health care for more than tens of thousands of children enrolled in SCHIP. The impact of the CMS directive has been to discourage a number of states that were considering SCHIP expansions and has caused concerns amongst states that have income levels above the newly defined effective level of 250 percent of FPL.

On behalf of the Board and approximately one million children served though the Healthy Families program, we would appreciate your support for AJR 54.

Sincerely,

Lesley Cummings
Executive Director

cc: Assembly Member John Laird
Senator Darrel Steinberg
Assembly Health Committee Members
Jennifer Kent, Office of Governor Arnold Schwarzenegger
Almis Udrys, Assembly Republican Caucus
Kevin Hanley, Assembly Republican Caucus
Managed Risk Medical Insurance Board Members